

INTERAGENCY CLASSIFICATION REVIEW COMMITTEE

WASHINGTON, D.C. 20408

SEP 20 1973

MINUTES OF THE SEPTEMBER 5, 1973
MEETING OF THE INTERAGENCY CLASSIFICATION
REVIEW COMMITTEE

Participants:

James B. Rhoads, Acting Chairman
David O. Cooke, Defense
Osborne Day, NSC
Robert G. Dixon, Justice
Mark Feldman, State
Charles L. Marshall, AEC
James E. O'Neill, Archives
John Warner, CIA

Attending:

William L. Brown, AEC
Joseph J. Liebling, Defense
Douglas Marvin, Justice
Mark Spiegel, State
Adrienne Thomas, Archives

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Proceedings:

Dr. Rhoads introduced Mr. William Brown who has been appointed Executive Director of the ICRC and will assume his new duties on or about October 1. Mr. Brown, currently a lawyer with the Office of General Counsel of the Atomic Energy Commission, was born in Oklahoma City, Oklahoma, received his undergraduate degree from Oklahoma City University, and his law degree from the School of Law of that University. Dr. Rhoads welcomed him on behalf of the Committee.

Dr. Rhoads made the following announcements:

1. The ICRC Appeals Procedure had been published in the August 23 issue of the Federal Register. Copies of the Appeals Procedure were distributed to the Committee members. *Have asked Libby to send me copy.*

2. Ambassador Robert Blake had submitted to the Committee the "Report of the Ad Hoc Working Group on Exemption Authority and Classification Guides." Dr. Rhoads announced that the report will

be considered at the October 3 meeting of the ICRC. Ambassador Blake will attend the October meeting to formally present the report and to answer any questions the Committee may have about the Working Group's findings.

Minutes of the Previous Meeting

Dr. Rhoads asked if there were any corrections or additions to the Minutes of the August 3 meeting.

STAT Mr. Dixon pointed out that, contrary to what was reported on page 2 paragraph 7, he, not [] had requested that the phrase "relating to intelligence sources and methods" be added to the sentence ending . . . CIA's declassification appeals cases." (Item 3, page 3 - Minutes - July 5)

Mr. Warner stated that he felt that the Justice Department's opinion relating to intelligence sources and methods, which was discussed at the July 5 meeting, applied not only to the CIA but to the entire intelligence community and that the Minutes of the July meeting ought to be amended to reflect this view.

Mr. Dixon pointed out that although the implications of the opinion affect all cases relating to intelligence sources and methods regardless of the originating agency, the Justice Department had been specifically requested to comment on CIA appeals cases relating to this subject.

Mr. Feldman stated that the discussion following the presentation of the Justice Department opinion had recognized the opinion's application to all departments and agencies originating material containing intelligence source and method information.

Mr. Warner agreed that the July 5 Minutes need not be amended as long as the Committee was on record as recognizing the Justice Department opinion's application to other agencies.

The Minutes of the August meeting were then accepted with the previously noted change.

Agenda Item #3 - Letter to General Haig

Draft letters to General Haig reflecting the Committee's concern regarding the decision to transfer the ICRC staff from the Executive Office Building to the National Archives, both physically and

administratively, had been prepared by NARS and AEC and circulated to the members prior to the meeting. It was the consensus of the Committee that the stronger AEC draft be adopted with certain revisions.

Mr. Cooke felt that the last paragraph of the letter made it appear that reconsideration of the ICRC staff's transfer was contingent upon the appointment of a permanent Chairman.

Dr. Rhoads said that although the two actions were not dependent on each other, tactically it might be easier to have the decision reversed at the time a permanent Chairman is appointed.

Mr. Marshall agreed, saying that when something new has happened (appointment of a Chairman) it will be easier to reverse the decision without making it look as though General Haig's original decision had been a mistake.

Mr. Cooke agreed to withdraw his objection to the paragraph.

Mr. Dixon suggested that a paragraph be added to the letter which stated that since the ICRC is an arm of the NSC and because of its working relationship to the Council, it would be appropriate for the ICRC staff to be located in close proximity to its parent body.

Mr. Day pointed out that since the NSC is an interagency group which is not physically located within the White House, the argument concerning the ICRC staff's proximity to the Council was a false issue.

The language suggested by the Justice Department was revised to point out the similarity between the NSC staff's relationship to the NSC and the ICRC staff's relationship to the NSC. The recommendation should be that the ICRC staff, like the NSC staff, should be located within the White House complex. The new paragraph was read by Dr. Rhoads and agreed to by the members.

Mr. Feldman suggested that the letter be accepted as now revised and that any minor editorial changes be left to the Chairman without further consultation with the members. The Committee agreed that the letter should be sent to General Haig as soon as possible.

Agenda Item #4 - Memorandum of Agreement

Dr. O'Neill introduced a revised version of the proposed Memorandum of Agreement on copying classified documents for purposes of declassification review which included changes suggested by the members.

He indicated that the purpose of the Agreement was not specifically aimed at facilitating declassification review at the ICRC level but was to assist agencies making the initial review for declassification. Dr. O'Neill felt that AEC's recommendation that the originating agency be informed each time a classified document was reproduced for declassification review purposes would be unduly burdensome for agencies like the Archives which had to review many millions of documents a year.

Mr. Marshall explained that the security people at AEC were quite concerned about controlling the number of copies of classified documents. However, he agreed to accept the revised Agreement on the basis of Dr. O'Neill's assurance that only one copy would be made and that the appropriate accountability procedures would be followed within the agency making copies.

Dr. Rhoads suggested that the Agreement would be an appropriate topic for an ICRC Information Memorandum to be sent to other agencies. The members agreed.

Dr. O'Neill said that, if it became necessary, the Archives would attempt to persuade other agencies to become signatories to the Agreement.

The members signed the Agreement on behalf of their agencies at the conclusion of the meeting.

Agenda Item #5 - Louis Kruh Appeal

Although the Louis Kruh appeal case had been discussed at the last meeting, a formal vote had been postponed at Mr. Dixon's request to allow him time to consult with Attorney General Richardson. Mr. Dixon said that based on his discussion with Mr. Richardson the Justice Department's opinion was that the document could be declassified. Since the document is over 20 years old and was written during the height of the cold war, Mr. Dixon felt that the document would be viewed in the historical perspective of that time period. He asked the Committee whether the primary objection to the document's declassification was based on the two sections which [] had specifically identified at the last meeting.

Mr. Warner said that the CIA's objections were to the entire document not just the two sections mentioned by Mr. Dixon.

Mr. Day said that the NSC staff strongly supports [] arguments against declassification and that they felt the repercussions

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which would result from the document's release may even have been understated. He expressed the opinion that if documents of this sort are released in a piecemeal fashion that it would cause an erosion in the confidence of the foreign intelligence community in the U.S. government. This could cause them to stop providing the United States with vital intelligence information.

Mr. Warner said that the release of the document would place those foreign governments which do not admit to their own people that they engage in COMINT activities in an untenable position.

Mr. Feldman stated that the State Department felt that with certain references to foreign governments deleted the document could be declassified. The main thrust of the document deals with the organizational structure of the U.S. government. Mr. Feldman felt that it would be difficult to justify the document's continued classification.

Mr. Warner raised the issue of sanitization of documents by pointing out that the Executive Order does not mention sanitization.]

Mr. Feldman pointed out that the Executive Order does specify that only information actually requiring protection is to remain classified. ?

It was mentioned that the Order and the NSC Directive specifically require paragraph marking of documents thus allowing the release of unclassified or declassified portions of documents. Dr. O'Neill pointed out that the CIA frequently sanitizes documents by eliminating references to sources and then releases the documents. BUT THIS IS NOT REQUIRED

Mr. Warner felt that in this case sanitization was not possible.

Mr. Marshall asked what benefits would accrue to the United States by declassifying the document. He felt that the arguments against declassification were overwhelming.

Mr. Feldman pointed out that according to the Executive Order it is not necessary to prove that declassification would benefit the United States. It is the Committee's function simply to decide whether declassification would jeopardize the national security.

Dr. Rhoads suggested that two votes be taken: one vote on declassification of the entire document and one vote on declassification with certain deletions.

- (1) Declassification of the entire document:
Yes - Archives and Justice
No - AEC, CIA, Defense, NSC, and State
- (2) Declassification of the document with certain deletions:
Yes - Archives, Justice, and State
No - AEC, CIA, Defense, NSC

The appeal was denied by the Committee.

Agenda Item #6 - Report on Bernstein Appeal

Mr. Day reported that there had been no change in the status of the case since the last meeting. The ICRC had not yet received formal notification from the NSC withdrawing the objection to the declassification of the Kennedy-Khrushchev correspondence relating to the Cuban Missile Crisis.

Dr. Rhoads said he had received a letter from Professor Bernstein just after the last meeting inquiring about the status of his request. The Committee must respond to Professor Bernstein soon.

Mr. Spiegel expressed concern about the procedural aspects of this case. The case had originally been submitted to the ICRC because there had been a difference of opinion between the State Department and NSC regarding declassification. The Bernstein appeal would have been voted on by the Committee at the last meeting except for the NSC assurances that they would withdraw the original objection to declassification.

Mr. Feldman asked if his understanding that NSC had agreed to declassification of the documents was correct. Mr. Day agreed that he was correct. The memorandum recommending declassification had been sent forward to Dr. Kissinger, but no response had been received.

Dr. Rhoads said that the situation placed the Committee in a very awkward position.

Dr. O'Neill felt that the matter had to be resolved no later than the October meeting.

Mr. Day agreed to press for an answer and call Dr. Rhoads to inform him of the outcome.

Dr. Rhoads asked if there were any other business for the Committee to consider.

Mr. Dixon replied that the Justice Department had completed the opinion asked for by the Committee on the authority to classify information in the possession of the Government but produced by private parties. It was agreed that the opinion would be circulated to the members for their comments.

The meeting was then adjourned.